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ABSTRACT

Miss Barbara A. Ringer, Assistant Register of Copyrights, Library of Congress, filed a formal complaint of discrimination on September 2, 1971. She charged that the rejection of her application for the position of Register of Copyrights in the Library of Congress was the result of discrimination for reasons of sex and race. An analysis of the complaint filed including all documents, exhibits, recordings, the investigation report, and the hearing transcript provide a preponderence of evidence to conclude that the rejection of Miss Ringer's application for and appointment to the position of Register of Copyrights was the result of discrimination for reasons of sex and race. The appeals examiner makes several recommendations with respect to this particular case and to the general employment practices at the Library of Congress. (Author/SJ)

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August 10, 1972

APPEALS EXAMINER'S FINDINGS AND RECOMMENDED DECISIONS IN THE APPEAL OF

MISS BARBARA A. RINGER
Library of Congress

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Dates and Place of Hearing:

April 5, 6, 7, 11, 18, 19, 20, 21, & 25, 1972

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LI 003 763

I

Miss Barbara A. Ringer, Assistant Register of Copyrights, Library of Congress, Washington D.C., filed a formal complaint of discrimination on September 2, 1971. She charged that the rejection of her application for the position of Register of Copyrights in the Library of Congress was the result of discrimination for reasons of sex and race.

A pre-hearing conference was held March 16, 1972, at the Library of Congress. Miss Ringer, (Complainant) Messrs. Elliott C. Lichtman, John J. Kominski and Ernest Waller were present. The purpose of the conference was to outline the hearing procedures and ascertain the witnesses of the parties concerned.

The hearing was held April 5,6,7,11,18,19,20,21 & 25, 1972, in accordance with the procedures outlined in Library of Congress Regulation 2013-3, September 1, 1971. Forty (40) witnesses were scheduled to testify: thirteen (13) for the Complainant and twenty-five (25) for the Library of Congress. Mr. L. Quincy Mumford, Librarian of Congress and Mr. George D. Cary, Register of Copyrights were requested as witnesses by the Complainant and the Library. Both testified. Six (6) of the witnesses requested by the Complainant testified. Eight (8) of the witnesses requested by the Library of Congress testified. By consent of the interested parties, Mr. Eugene C. Powell testified in lieu of Mr. Robert W. Hutchinson,

as a witness for the Library of Congress.

The position of Register of Copyrights, Library of Congress was vacated August 31, 1971, upon the retirement of Mr. Abraham L. Kamenstein who held that position since 1960. The vacancy thus created was announced August 9, 1971, in Posting A2103. The Complainant and Mr. George D. Cary applied for the position. The Librarian of Congress selected Mr. Cary and announced his appointment in Library of Congress Special Announcement 425, August 27, 1971 .

The Complainant initiated court action challenging the procedures followed by the Librarian in appointing Mr. Cary. On September 27, 1971, William B. Jones, Judge for the U.S. District Court for the District of Columbia issued the following orders:

> "1. The Court issues its declaratory judgment that Defendent Mumford failed to follow the procedural regulations of the Library of Congress in the appointment of George D. Cary as Register of Copyrights on August 26, 1971; that defendant Mumford's failure to follow his own published procedures prejudiced plantiff Ringer's rights in seeking appointment as Register of Copyrights; and that the appointment of said George D. Cary as Register of Copyrights is null and void.
>
> 2. Defendant Mumford is hereby enjoined from appointing a new Register unless and until he follows all the procedures required by regulations of the Library of Congress governing said appointment.
>
> 3. Nothing in this order shall prevent defendant Mumford from making a temporary or interim appointment of an acting Register of Copyrights during the period the procedures are being complied with in the appointment of Register

> of Copyrights, but any such temporary or interim appointment shall be without prejudice to plaintiff's right to be considered for the position of Register of Copyrights."

The vacancy for Register of Copyrights was announced again September 27, 1971, in posting A2229. The Complainant, Mr. Cary and Mr. L. Clark Hamilton applied for the position. On October 29, 1971, Mr. Cary was selected for the position by the Librarian of Congress. This action, though taken in compliance with Library of Congress procedures and regulations, was not responsive to the Complainant's charge that the Librarian of Congress rejected her application for the position of Register of Copyrights for reasons of sex and race. The Complainant brought three (3) charges of discrimination for reason of sex and four (4) charges of discrimination based on race.

An investigation was conducted by an Equal Opportunity Officer who rendered a decision that the evidence found did not support the charges made by the Complainant. The Deputy Librarian of Congress notified the Complainant of his decision to concur in the findings and recommendations of the Equal Opportunity Officer on December 28, 1971. The Complainant considered the decision unfavorable and on January 7, 1972 requested a hearing.

II

The Complainant charged:

> "a. A consistent pattern within the Library of Congress of keeping women out of high-level policy-making positions such as this one."

The statistics provided by the Personnel Operations Office, November 30, 1971 (Complainants Exhibit No. 1) show a total of 1940 women and 1711 men employed at the Library of Congress. At the GS-9 grade level and below, women consistently out number men at each grade level except at the GS-3 grade level where there are 81 women and 90 men. At the GS-10 and GS-11 grade levels the ratio of men to women is more or less equal. At the GS-12 level and above the ratio of men to women begins to broaden and progressively spreads at somewhat of geometric rate with each increase in grade level as graphically demonstrated on page 2 of Complainants Exhibit No. 1.

The Complainant in her testimony, interpreted high-level policy-making jobs as including jobs at division level and above. The table on page 3 of the investigation report when modified to show grade levels of incumbent, demonstrates the extent to which high-level policy-making positions are incumbered by men and women:

Title	Appointment	Male	Female
Deputy Librarian	10/11/65	Statutory	
Assistant Librarian	3/4/63		GS-18

Title	Appointment	Male	Female
Executive Assistant to the Librarian	6/4/54		GS-14
Legislative Liaison Officer	4/2/62		GS-15
Interpretive Projects Officer	5/5/69		GS-14
International Relations Officer	7/20/64		GS-12
Director, Administrative Department	3/23/70	GS-17	
Director, Congressional Research Service	2/28/66	Statutory	
Register, Copyright Office	11/1/71	GS-18	
Director, Processing Department	5/6/68	GS-18	
Director, Reference Department	4/21/69	GS-18	
Law Librarian, Law Library	6/14/71	GS-18	

Of the twelve positions considered as high-level policy-making by the investigating officer, seven are held by men at the GS-17 grade level and above. Of the five positions held by women only one is a GS-18 the remaining four are between the GS-15 and GS-12 grade levels. Thus the preponderance of these positions are assigned to men as opposed to women. Of the eleven positions listed in the Chart on page four of the investigation report six are held by men at the GS-16 to the GS-11 levels, five are held

by women at the GS-14 to GS-12 grade levels:

Position	Appointment	Male	Female
Director	10/18/65	GS-16	
Assistant Director	10/15/62	GS-15	
Employee Relations Officer	4/7/58		GS-14
Employee Relations Specialist	8/25/58		GS-12
Personnel Operations Officer	1/28/47	GS-14	
Assistant Personnel Operations Officer	11/30/70	GS-11	
Placement Officer	12/17/62		GS-14
Assistant Placement Officer	2/8/71		GS-12
Classification Officer	3/17/69	GS-14	
Assistant Classification Officer	7/31/67		GS-13
Head, Training Office	12/19/66	GS-13	

Considering the high-level positions described in Library Exhibit No. 1 it is evident that ratio of men to women in these high-level policy-making positions in 1954 and 1971 were not in proportion to the ratio of men to women employed in the Library of Congress, although there has been a percentage increase of women in these positions throughout the Library of Congress since 1954. This same disparity is reflected in the graph in Complainant Exhibit No. 1 with respect to the ratio of men to women in the 1410 Librarian series.

While the statistics and charts are not in themselves sufficient basis upon which to determine whether or not the Library discriminates against women, it is evident that women, though representing more than half the workforce, have not faired as well as men, grade wise. The documentary evidence presented demonstrates a consistent pattern of excluding women from high-level policy-making positions.

III

The investigative file and testimonies given during the hearing clearly indicate that the Complainant was regarded by her superiors and colleagues as an outstanding authority in the field of national and international copyright law and related matters.

The investigator stated in his report:

> "In terms of technical ability, not one witness - even those who felt strongly that the Complainant was not the best choice for the position - faulted her knowledge and abilities in the field of copyright law. That she is an outstanding specialist in her field is the only area of unanimity this Officer found among all the witnesses in all of the documents presented. During my interview with the Librarian, there was no question raised by him concerning the Complainants subject knowledge or expertise in the field of copyright law."

The Complainant's knowledge of and experience and efficiency in copyright matters were extolled by her superiors including the Librarian. This was reflected in the number of outstanding ratings she received, and her supervisors recommending her for incentive and other notable rewards in recognition of her work. These represent the impetus and the personal impact the Complainant carried and applied to her assignment as Assistant Register of Copyrights. This opinion was expressed in the affidavit and testimony of Mr. Abraham L. Kamenstein former Register of Copyrights under whom the Complainant served as Assistant Register. This opinion was also shared by the Librarian of Congress as he so testified. There is no evidence that the Librarian took steps to question Mr. Kamenstein's

display of appreciation for the quality and quantity of work of the Complainant nor to query why Mr. Cary was not being similarly evaluated or given outstanding performance ratings or recommended for other awards by Mr. Kamenstein. Yet the Librarian testified to the effect that he knew the Complainant's performance ratings were better than those of Mr. Cary who was almost without exception rated satisfactory by Mr. Kamenstein. The Librarian's position was that the Complainant's "noteworthy professional and technical competence was not considered overriding, however, in the evaluation of candidates which resulted in the selection of Mr. Cary."

Mr. Kamenstein made it clear to the Librarian in 1964, 1968, and subsequently that Mr. Cary was not in the same class as the Complainant. He also recommended that the Complainant succeed him as Register of Copyrights.

Library of Congress Regulation 2017-2. P.3, June 4, 1968 defines three levels of performance ratings:

"A. Outstanding - means that all aspects of performance not only exceed normal requirements but are outstanding and deserve special commendation.

B. Satisfactory- this rating covers a wide range of performance. It is used for performance that is at a level but short of standards for "Outstanding," and it covers performance that barely meets the minimum requirement.

C. Unsatisfactory - means that performance is below the standard on one or more duties to the extent that performance as a whole is unacceptable for continuance in the position."

The Regulation further states that:

> "performance ratings shall be used as is appropriate in consideration of promotions, transfers and reductions-in-force."

The Librarian of Congress stated on the Personnel Action Recommendation (PAR) that his selection of Mr. Cary was based on his personal judgment that Mr. Cary was the best qualified of the three applicants, and his confidence in Mr. Cary's administrative judgment and abilities; Mr. Cary's impressive professional qualifications, and also his extensive experience as Chief legal officer of the Copyright Office and Deputy Register of Copyright.

The Librarian gave considerable weight to the administrative capabilities of the Complainant and Mr. Cary in filling the Register position. Administrative responsibilities are outlined in the job description of both the Deputy Register and the Assistant Register. Mr. Cary testified that his dislike for administrative work was not a secret and was well known to the Librarian the former Register, and to others. The evidence submitted shows that the Assistant Register gave little or no attention to administrative matters not by choice, but at the request and approval of Mr. Kamenstein. Thus most of her time was devoted to technical and legal matters. Mr. Kamenstein testified that he assigned administrative responsibilities to Mr. Cary who would frequently make excuses for not carrying out his administrative assignments. In fact Mr. Kamenstein questioned the adminis-

trative ability of Mr. Cary to run the office, while he and the Complainant were away for extended periods. Witnesses elaborated on the point and testified to that the effect that Mr. Cary was either reticent or reluctant to take action on administrative matters. Mr. Cary's dislike for administrative work was demonstrated by his not being able to find time to provide information requested by the Equal Opportunity Officer conducting the investigation of this case. Mr. Cary's admitted destruction of a questionnaire and other documents given to him by the Equal Opportunity Officer is further evidence of Mr. Cary's contempt for administrative work and for the Equal Opportunity Program of the Library of Congress, the President's Executive Orders and of the Civil Rights Act. Such action on the part of Mr. Cary is untenable for an employee holding a position such as Register or Assistant Register of Copyrights.

An analysis of the applications and performance appraisals further reveal that the Complainant had through past experience demonstrated her abilities and competence in the subject field, and that her qualifications, experience, professional and international standing of copyright matters do infact surpass those of Mr. Cary. It is determined, that personal bias based on sex rather than the individual merits of the applicants was the basis for not selecting the Complainant for the position of Register of Copyrights, and that such action is discriminatory.

IV

The Librarian in anticipating the vacancy created by the retirement of the Register of Copyrights took positive steps to recruit several male candidates from outside the Library of Congress. These males were members of various institutions, law firms, professional societies, etc. This action on the part of the Librarian whether taken wittingly or unwittingly and when viewed in light of very little if any supporting contraevidence, reveal an effort to block the appointment of the Complainant in favor of a man.

A number of individuals, members of law firms and professional organizations wrote letters supporting the appointment of the Complainant as Register of Copyrights. Whether these supporters of the Complainant knew or did not know that Mr. Cary was not a candidate or had voluntarily declared himself as not being desirous of the position, they did not present any candidate, male or female from within or outside the Library of Congress other than the Complainant. They in fact urged the appointment of the Complainant as Register of Copyrights.

During April 1970, a petition addressed to the Librarian was circulated urging the selection of the Complainant as the next Register of Copyrights. The petition was conceived, prepared and promulgated by black leaders in the Copyrights Office whose appointments to supervisory positions resulted in considerable backlash. The signers of the petition were both black and white, supervisory and non-supervisory, professional and non-professional

employees, The petition focused primarily on:

> "The fact that the Copyright Office is in the midst of crises. The drastic drop in morale at the Office, of which our administrative and personnel problems are symptomatic, has taken its toll on both rank, file and management. The former are increasingly distrustful of their leaders and the latter have found it steadily more difficult to lead. To work out the problems in the Copyright Office a distinctive kind of administrator is needed."

The petition outlined the qualifications of "a distinctive kind of administrator" and assigned these qualifications to the Complainant. The petition represents a protest against the appointment of Mr. Cary and written support for the appointment of the Complainant as Register of Copyrights. It was a reinforcement of written support of the Complainant by outside influences. Thus it is concluded that there was in fact strong written support of the Complainant from within and outside the Library of Congress. The Librarian was well aware of this written support, but there is little evidence that he was responsive to these momentous documents. Such non-responsiveness when viewed in light of other actions taken by the Librarian to preclude the appointment of the Complaintant in favor of a man, is tantamount to ignoring the written support favoring the appointment of the Complainant as Register of Copyrights as charged by the Complainant.

Based on the preponderance of evidence submitted in the investigation file and testimonies given during the hearing, it is determined that the appointment of Mr. George D. Cary as Register of Copyrights over the

Complainant was based on the personal judgment of the Librarian of Congress rather than an objective evaluation of the merits of each applicant as required by Library of Congress regulations and as demonstrated in the applications and performance ratings of the Complainant for the position of Register of Copyrights. Such action prejudiced the rights of the Complainant and in fact precluded her from being appointed Register of Copyrights, and therefore discriminatory for reasons of sex.

V

On the matter of racial discrimination the Complainant charged:

> "A consistent pattern throughout the Library of Congress of discrimination against blacks with respect to promotions in terms of grade and responsibility."

A review of the evidence submitted clearly demonstrates that blacks do not progress nearly as well as whites in the Library of Congress. Blacks constitute over one third of the 3,855 employees in the Library of Congress, but 88.5% of them are in the GS-1-8 grade levels as compared to 38.2% of the white employees in the same grade levels. More specifically blacks constitute 76.4% of the workforce in the GS-1-4 grade levels; 42.2% of the workforce in the GS-5-8 grade levels; 13.9% of the workforce in the GS-9-11 grade levels; and only 5.4% of the workforce in the GS-12-13 grade levels.

As of November 30, 1971, there were one hundred thirteen (113) whites in GS-14 grade levels. In contrast there were only three (3) blacks at the GS-14 grade level. In fact it has been pointed out that there has never been a black employee above GS-14 in the Library of Congress. At the GS-15 grade level and above there were 123 whites. In contrast there were no blacks at the GS-15 grade level and above.

From the data presented it is evident that definite weaknesses exist in the Library of Congress with respect to recruiting and promoting black employees. The recruiting program for blacks as attested by the Librarian

is conducted around the Washington Metropolitan area for low level positions. There is very little emphasis on recruiting blacks in professional field nor to promoting them to professional or semi-professional positions.

The May 5 meeting held by the Complainant was followed by a series of other meetings and memorandums.

On May 13, 1970, Mr. Abraham L. Kamenstein, then Register of Copyrights, sent a memorandum to all staff members concerning filling of positions, He wrote:

> "The purpose of the Library of Congress posting system is to insure that all qualified candidates for a position are given an equal opportunity to apply for an opening, and are judged solely on their merits...In cases where an employee feels that he has been denied a fair opportunity for consideration for a position under the Regulations, I urge that he contact me, Mr. Cary, or Miss Ringer directly...
>
> The vital element here is total fairness and lack of personal bias in particular that there be no discrimination with respect to race, color, religion, national origin, sex, etc."

On May 13, 1970, three employees of the Compliance Section wrote a memorandum to Mr. Herbert Belmear, Fair Employment Practice Office, regarding irregularities and discrimination in fair employment practices within the Copyright Office. The memorandum stated in part:

> "We protest the manner in which Copyright Office conducts appointments and promotions of personnel. The open display of nepotism and gross discrimination...
>
> We stand witness to the fact that the section of Reference Search oppose the hiring of any blacks...
>
> The fact that 77% of the blacks in the Copyright Office are GS-5 and below is a matter that should undergo the closest scrutiny of the Fair Employment Practices Office."

On May 21, 1970, Staff members of the Examining Division of the Copyright Office requested, among other things that the Personnel Office take:

> "Immediate steps . . . . to rectify past racial discrimination in hiring and promotion throughout the Office by issuance of guidelines and evidence that action has been taken."

Mr. Joslyn A. Williams an employee in the Arts Section, and President, Local 1826 American Federation of Government Employees (AFGE), Library of Congress, pointed out in a memorandum to the Complainant on June 16, 1970, that:

> "The problem of discrimination in the Copyright Office is so serious that unless it is dealt with from within, this office will lose control of the situation and it will become a public matter.
>
> In my opinion the question of equal opportunity is the most explosive of the issues which confront you."

Mr. William's memorandum was his response to the draft of the Complainant's June 18 memorandum.

On June 17, 1970, the authors of the May 13 memorandum to Herbert Belmear, FEPO, addressed a memorandum to Mr. Eugene C. Powell, Assistant Director of Personnel, Subject: "Follow-up to Memo Dated May 13, 1970, concerning Irregularities and Discrimination in Fair Employment Within the Copyright Office." The memorandum stated:

> "At the conclusion of our meeting on May 21, 1970, we adjourned with the understanding that after a reasonable length of time the Personnel Office would come forward with the understanding that after a reasonable length of time the Personnel Office would come forward with some recommendations to the Copyright Office concerning problems specifically pointed out. We were told that another meeting would be held so as to enable the Personnel Office to make this report. As of today's date we have heard nothing from you or anyone on your staff."

The Powell-Curran Report of July 7, 1970, informed the Librarian that:

> "There are other personnel problems that have emerged such as the charges of racial and sex discrimination in many parts of the office...All of these matters where specific cases are involved have been brought to the attention of the appropriate offices of the Personnel Office and, where necessary, additional investigations are being conducted."

As stated before a written report on the investigation of racial discrimination was never issued.

The matter of racial discrimination was of such magnitude that "on June 25, 1971, the Council of the American Library Association (ALA) adopted a resolution alleging racial discrimination by the Library of Congress in its recruitment, training and promotions practices." The ALA appointed

an inquiry team to look into the facts of the case. Complainant's exhibit number 12 is the team's report which stated among other things that "all formal testimony heard by the Team was supportive of allegations of racial discrimination...The Team believes that although circumstances at the Library may be somewhat worse than hereinafter reported, they are unlikely to be much better."

That racial discrimination exists within the Library has been attested to by outside investigators and by union officials and blacks within the Library of Congress. While it is unlikely that overt discrimination would be found, there is sufficient testimony supporting the claim that one supervisor, now retired, refused to hire blacks in his organization. From the evidence and statistics presented it is concluded that there is a pattern of racial discrimination in recruitment and assignments which relegates black employees to lower positions, and thus prohibits their advancement with respect to promotions in terms of grade and responsibility.

VI

The evidence submitted does not indicate administrative problems in the Library of Congress that were atypical or of any particular cause for unusual concern of the Librarian and managers prior to early spring 197 This is not to say that administrative problems did not exist before that time. But significant administrative problems relative to this case did commence around that time. They are considered significant because of their racial implications. While preselection, favoritism, etc., existed prior to spring 1970, and while mild objection to such practices are eviden the proposal to appoint Mr. Bernard Dietz as Head of the Book Section, an Miss Gail Harris, a black woman, as Assistant Head of the Book Section caused furor and consternation, the likes of which was not evidenced here tofore. Thus the opposition though directed against both Mr. Dietz and Miss Harris was directed primarily against the appointment of Miss Harris and may be characterized as white backlash, which was further demonstrat when Mr. Herbert Roberts and Anthony Harrison were appointed to those positions. Opposition to these proposed appointments were of such magnitude that neither Mr. Dietz nor Miss Harris filled these vacancies.

On or about May 5, 1970, the Complainant held a meeting with certain supervisors and other staff members of the Copyright Office. The discussions centered around the administrative problems, which as stated before had racial overtones. This meeting coupled with the proposal to

appoint Mr. Dietz and Miss Harris as Head and Assistant Head of the Book Section precipitated growing dissent among white staff members. Their reactions were of such momentum that on May 26, 1970, the Librarian commissioned Messrs. Eugene C. Powell and Donald C. Curran to study the problem. In the meantime Mr. Herbert Belmear and Mrs. Hines were giving study to racial aspects of the problem. Their report never materialized.

The Complainant conducted what she termined a "Preliminary investigation of current administrative problems in the Copyright Office." Her conclusions were outlined in her memorandum of June 18, 1970. She admitted that "certain deep-seated administrative problems of long standing have been allowed to continue." She considered it important that "personnel actions must be taken openly and fairly" and that "any complaints of discrimination, racial or otherwise will be investigated fully and, if the complaint proves justified, will be acted upon." This memorandum when viewed objectively, was a statement of facts and a promise to correct existing problems. The memorandum could hardly be classified as distasteful or administratively unwarranted.

The May 5 meeting and the June 18 Memorandum were held in disdain by certain white division chiefs, supervisory personnel and other staff members. Certain of these employees met with the Librarian on or about

June 23, 1970, to voice their opposition. The Librarian expressed to the Complainant his dissatisfaction and distaste for the meeting and the memorandum. He characterized the actions of the Complainant as that of a bull in a china closet; that to admit error is an administrative error; and that the Complainant was permissive in handling administrative matters. Neither the ~~M5~~ May 5 meeting nor the June 18 memorandum, when viewed objectively seem to warrant such criticism.

The Powell-Curran Report was issued July 7, 1970.

> "This report summarizes a review of current problems of the Copyright Office, primarily in the personnel and administrative areas undertaken for the purpose of defining them, ascertaining their causes and making appropriate recommendations for their solution."

The report sets out to define the problems which the Complainant had already outlined in her June 18 memorandum. Nothing was said in the Powell-Curran report that could not have been deduced from the Complainant's memorandum even on matters of discrimination.

The forthrightness and positiveness with which she pointed out, and promised to do something about the discrimination problems and those guilty of such practices are undoubtedly the reasons for the subtle and negative reactions against her May 5 meeting and June 18 memorandum. The Librarian testified that he had never criticized the Complainant before the June 18 memorandum. This attests to the Librarian's sympathy for those opposing

the appointment of the Complainant, and indicates that he condoned actions and philosophies of those opposing the Complainant's liberal attitude toward blacks.

The Complainant concurred in the recommendation to appoint Messrs. Herbert O. Roberts and Anthony Patrick Harrison, two blacks, as Head and Assistant Head of the Book Section. This recommendation caused even greater consternation than the original proposal to appoint Mr. Dietz and Miss Harris to the same positions.

The actions on the part of the Complainant demonstrates her concern for equal opportunity in the Library of Congress. The negative reactions of white staff members and the response they incurred from the Librarian demonstrates their bias against the liberal support the Complainant proffered to black employees. These insidious reactions directed against and in opposition to Complainant's stand on racial matters support her charge that:

> "A demonstratable bias against any white such as myself who has been characterized as "pro-black" in personnel matters, or who is willing to speak-out openly on the problems and seek to enforce the published policies of the Library of Congress with respect to equal opportunity."

VII

All outside candidates solicited by the Librarian had reported their disinterest in the position as of August 12, 1971. August 13, 1971, was the closing data for applying for the position. Mr. Cary had said he was not seeking the position because of a heart attack; the urgings of his wife not to get involved in strenuous activity; and because he was anticipating retirement. Mr. Cary testified that on the night of August 12 he made a last minute decision to apply for the position for several reasons: (1) Rumors circulating that employees in the Examining Division were getting up a petition opposing the appointment of Mr. Robert Hadl as Chief of the Examining Division. (2) Mr. Herbert O. Roberts and Mr. Anthony P. Harrison, two blacks, and other representatives and "emissaries" were circulating a petition urging the appointment of the Complainant since Mr. Cary was not interested in the job and supported the appointment of the Complainant. Mr. Cary felt these actions were improper. (3) He assumed the Complainant urged Mr. Roberts and Mr. Harrison to circulate the petition, and that she would do anything to get the job. (4) He did not want to be associated with anyone using this kind of pressure to get the job. (5) He thought the situation would be rather unpleasant and unhappy. (6) The Complainant had indicated to him that if she became Register changes would be made including the appointment of

Mr. Roberts as Assistant Register of Copyrights. He considered Mr. Roberts not qualified for the Head of the Book Section nor as Assistant Register of Copyrights. Mr. Roberts was the spokesman and leading dissident at the May 5 meeting, and to appoint a person who had taken a leading role in this "so-called confrontation or uprising" would be unwise; it would be in effect a reward for his starting the petition; and it would have a bad effect on the morale of the rest of the Office. Such changes in administration could hurt or harm employees.

Mr. Cary testified that it was well known up until August 12, 1971, that he was not a candidate for the position. The Librarian testified that Mr. Cary had made it very clear to him at different times between December 1970 and August 1971, that Mr. Cary had a strong interest in becoming Register of Copyrights, and that Mr. Cary was available for the job. During this interval the Librarian testified that he and Mr. Cary discussed many aspects and problems of the job including Mr. Cary's administrative philosophies and what might be done in the event Mr. Cary or the Complainant were appointed Register of Copyrights.

Mr. Cary expressed little if any affinity for the cause of black employees. He strongly opposed the appointment of blacks to higher positions. He was nonchalant towards charges of discrimination expressed by blacks at the May 5 meeting. He was less than cooperative with the Equal Opportunity

Officer during that Officer's investigation of this case. He was not sensitive to nor supported the Equal Opportunity Program of the Library of Congress. This is attested to by the fact that he destroyed documents prepared by the EEO Officer and refused to submit information, requested by the EEO Officer. Mr. Cary opposed the Complainant's comments that she would promote blacks to supervisory positions and take actions to assure equal opportunity and fair treatment of all employees.

Since outside interest for the position had come to naught, and since Mr. Cary had expressed his disinterest in the position, the Complainant was the one and only active candidate or applicant up to August 12,.1971. Mr. Cary's decision to apply for the position on the closing date of the announcement was aimed directly at stopping the appointment of the Complainant as Register of Copyrights and at thwarting the appointment of a black Assistant Register and the promotion of other qualified blacks to supervisory and other positions of greater responsibility than had been done in the Library of Congress heretofore.

The Complainant and Mr. Cary were career professionals and qualified for the position. As such they should have been afforded first opportunity to fill the postion under the Library's Merit Promotion Plan, even if either had been assigned to the position on an acting or trial basis. Authority to make appointments rest with the Librarian, but the fact that he elected to

solicit outside applicants indicates that the Librarian was either convinced that neither the Complainant nor Mr. Cary nor any other employee in the Library possessed the necessary qualifications to fill the position, or that he preferred not to appoint the Complainant knowing that Mr. Cary had expressed disinterest in the position.

The fact that the Librarian appointed Mr. Cary as Register of Copyrights was based upon his personal judgment and confidence in Mr. Cary's administrative judgment and abilities lends credability to the Librarian's testimony that Mr. Cary had expressed a strong interest in the job between December 1970 and August 1971. It was during this period that the Librarian became cognizant of Mr. Cary's administrative philosophies. Mr. Cary's decision to apply for and accept the job was tantamount to his decision to assure that his philosophies, rather than those of the Complainant would prevail throughout the Copyright Office.

The Librarian's appointment of Mr. Cary as Register of Copyrights was tantamount to his acceptance of Mr. Cary's administrative philosophies, a knowledge of which the Librarian acquired during their discussions between December 1970 and August 1971. The Librarian's acceptance of Mr. Cary's philosophies coupled with the foregoing analysis plus the Librarian's disparaging testimony regarding the effectiveness of blacks in supervisory positions supports the Complainant's charge that:

> "The facts surrounding the appointment will reveal that my candidacy was rejected because the Librarian had been convinced: (1) that my appointment would result in further promotions of blacks to supervisory positions in the Copyright Office; and (2) that, because of my demonstrated belief in equal opportunity and fair treatment of all employees, I would prove a dissident voice in the policy-making councils of the Library of Congress."

VIII

An analysis of the complaint filed including all documents, exhibits, recordings, the investigation report, and the hearing transcript provide a preponderance of evidence to conclude that the rejection of the Complainant's application for and appointment to the position of Register of Copyrights in the Library of Congress was the result of discrimination for reasons of sex and race; that there is a consistent pattern of discrimination which restrict the mobility of women to high-level positions in the Library of Congress; and that there is a consistent pattern of racial discrimination insidiously designed and effectively practiced to inhibit the progression of blacks to positions of greater responsibility and higher grades in the Library of Congress.

IX

Based on the foregoing analysis and conclusions, it is recommended that:

1. Recognizing the authority granted the Librarian of Congress in the Civil Rights Act, and the procedures outlined in Library of Congress Regulations, and considering the fact that the charges of the Complainant were levied against the Librarian of Congress, due process and the precedential nature of this case strongly indicate that the Librarian may wish to consider having someone outside the Library of Congress make the final decision in order to assure equanimity and equity.

2. The appointment of Mr. George D. Cary as Register of Copyrights be rescinded and declared null and void. Such action, if taken, should be considered corrective rather than punitive with respect to Mr. Cary.

3. The Complainant be appointed Register of Copyrights retroactive to October 29, 1971, with entitlement to the appropriate grade, salary and other benefits normally proffered the Register of Copyrights. Such actions should be taken without further prejudices, reprisals, etc., against the Complainant. Should the Complainant elect not to accept the position of Register of Copyrights, then recommendation number 2 above should not be effected and Mr. Cary should retain the position. But in any

event the Complainant should be promoted retroactively to GS-18.

4. Establish a position for and appoint a Director of Equal Employment Opportunity responsible to the Librarian of Congress for developing, maintaining, directing and evaluating a result-oriented program of equal opportunity for all persons employed by or seeking employment within the Library of Congress. The position should be established at not less than the GS-15 grade level. The initial appointment should be made from outside the Library of Congress. The appointee should be preferrably black and should possess broad knowledge and experience in the fields of personnel administration and equal employment opportunity.

5. Establish and vigorously pursue a more aggressive affirmative equal employment opportunity action plan and a Federal Women's Program. The plan and program should have realistic numerical goals with clearly defined timetables to improve the utilization of minorities and women in all occupations, at all grade levels especially GS-11 and above, and for all segments of the work force in which their representation is out of balance.

6. The Librarian should issue or reissue and publicize throughout the Library of Congress his personal affirmation of his support of an aggressive equal employment opportunity action program.

7. Make provisions for and require all supervisory personnel to attend training courses, seminars, etc. in equal opportunity

and race relations. Such courses, etc., should be pursued as soon as possible in order to assure that the principles, policies and practices of equal opportunity are understood at all levels of organization.

8. Conduct surveys of existing jobs and organizations to identify positions which can be restructured to provide upward mobility for employees in "dead-end" positions.

9. Review qualification standards to assure that requirements are realistic in terms of actual job duties; eliminate unrealistic education and experience requirements.

10. Establish or provide for special training courses designed to prepare and encourage upward mobility of employees now at lower grade levels so that they may work at their fullest potential and advance in accordance with their abilities.

Date: August 10, 1972

Ernest Waller

ERNEST WALLER
Equal Employment Opportunity
Appeals Examiner